

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS**

**APACHE CORPORATION
AND SUBSIDIARIES,**

Plaintiff,

v.

**UNITED STATES OF
AMERICA.**

Defendant.

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Case No. 4:24-cv-3640

COMPLAINT FOR REFUND OF FEDERAL INCOME TAXES

Plaintiff, Apache Corporation and Subsidiaries (“Apache”), hereby files this Complaint for Refund of Federal Income Taxes that were erroneously collected and illegally retained by Defendant, United States of America, and as a basis for this Complaint alleges as follows:

PRELIMINARY STATEMENT

1. Apache’s action arises under the Internal Revenue Code of 1986, as amended and codified in Title 26 of the United States Code, for recovery of federal income taxes erroneously collected and illegally retained by Defendant from Apache, plus statutory interest thereon as provided by law, with respect to the year ending December 31, 2014 (the “Taxable Year at Issue”).

2. This action seeks (i) a refund relating to credits under 26 U.S.C. § 41 totaling \$8,122,283 (the “Research Credit Refund”) and (ii) a refund relating to a capital loss carryback totaling \$53,362,087 (the “Capital Loss Carryback Refund”).

THE PARTIES

3. Apache is an independent energy company engaged in the exploration, development, and production of natural gas, crude oil, and natural gas liquids. Apache is a corporation under the laws of the State of Delaware and was the common parent of an affiliated

group that filed a Federal consolidated Form 1120, U.S. Corporation Income Tax Return (“Form 1120”), during the Taxable Year at Issue. Apache’s principal place of business is located at 2000 W. Sam Houston Pkwy S, Ste. 200, Houston, TX 77042 and at 2000 Post Oak Boulevard, Suite 100, Houston, Texas 77056 during the Taxable Year at Issue.

4. Defendant is the United States of America.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1346(a) and 26 U.S.C. § 7422. Specifically, this Court has jurisdiction as to the Research Credit Refund pursuant to 26 U.S.C. § 6532(a) because Apache has filed this Complaint after the IRS issued a formal notice of disallowance of Apache’s timely claim for the Research Credit Refund and within the applicable statute of limitations. This Court has jurisdiction as to the Capital Loss Carryback Refund pursuant to 26 U.S.C. § 6532(a) because Apache’s timely claim for the Capital Loss Carryback Refund has been pending more than six months and the IRS has not formally disallowed this claim.

6. As required by 26 U.S.C. § 7422, Apache fully paid the federal income taxes due for the Taxable Year at Issue with its originally filed 2014 Form 1120.

7. Venue for this action is proper in the United States District Court for the Southern District of Texas under 28 U.S.C. § 1402(a)(2) because Apache’s principal place of business is currently located at 2000 W. Sam Houston Pkwy S, Ste. 200, Houston, TX 77042 and was located at 2000 Post Oak Boulevard, Suite 100, Houston, Texas 77056 during the Taxable Year at Issue.

JURY DEMAND

8. Apache hereby demands that a jury hear all issues that are triable by a jury. Fed. R. Civ. P. 38.

ALLEGATIONS

9. Founded in 1954, Apache is an independent energy company that performs exploration activities and develops and produces natural gas, crude oil, and natural gas liquids. Apache's activities include (1) exploring for crude petroleum and natural gas; (2) drilling, completing, and equipping wells; (3) operating separators, emulsion breakers, desilting equipment, and field gathering lines for crude petroleum; and (4) all other activities in the preparation of oil and gas up to the point of shipment from the producing party.

10. During the Taxable Year at Issue, Apache conducted its activities both onshore across approximately 10.7 million gross acres in the United States and Canada and offshore, including shallow and deep water exploration and production activities in the Outer Continental Shelf ("OCS"). Each particular location in which Apache operated presented unique geology, rock mechanics, oil and gas quality, and other parameters that constitute new uncertainties as to the appropriate well design, completion, and stimulation process to produce oil and gas in a feasible and functional manner.

11. Apache's completion engineers, reservoir engineers, drilling engineers, production engineers, and geophysicists, among others, conducted research or experimental processes to resolve technical uncertainties related to developing new oil and gas production methods and components in formations or basins, especially where conventional development is not technically feasible due to a complex function of resource characteristics. Apache's research or experimental activities included drilling pilot model and prototype wells, conducting field trials, and evaluating analytical data to design wells and develop drilling, completion, and fracturing methods that are tailored to a location's specific properties. Apache's research or experimental activities also included developing a method to recycle water produced in a hydraulic fracturing operation.

12. Internal Revenue Code section 41 (26 U.S.C. § 41) allows for a credit for certain “qualified research expenses” (“QREs”) which is defined to include both in-house research expenses and contract research expenses. 26 U.S.C. § 41(b)(1). In turn, “in-house research expenses” includes wages, supplies, and amounts paid for the right to use computers in the conduct of qualified research and “contract expenses” means 65 percent of any amount paid to any person other than an employee for qualified research. *Id.* at § 41(b)(2)–(3). “Qualified Research” is research “undertaken for the purpose of discovering information—(i) which is technological in nature, and (ii) the application of which is intended to be useful in the development of a new or improved business component of the taxpayer.”

13. In connection with its research and experimental activities in, among other places, the Permian Basin, Eagle Ford, Canyon Lime, and North Omaha, Apache incurred QREs under 26 U.S.C. § 41 including but not limited to wages, contract research payments, and other research expenditures.

14. On its Form 1120 for the taxable year ending December 31, 2011, Apache reported a credit under 26 U.S.C. § 41 in the amount of \$1,582,875 which became a credit carryforward to the Taxable Year at Issue.

15. On its originally filed Forms 1120 for the taxable years ending December 31, 2012, December 31, 2013, and December 31, 2014, Apache claimed a \$1 research credit under 26 U.S.C. § 41.

16. On or around October 4, 2017, Apache timely filed Forms 1120X, Amended U.S. Corporation Income Tax Returns for 2012, 2013, and 2014 to report certain expenditures as QREs that it had originally reported and deducted for those years as salaries and wages and intangible drilling costs (the “Amended Returns”).

17. The Amended Returns reported QREs that resulted in research credits under 26 U.S.C. § 41, as reported on Forms 6765, Credit for Increasing Research Activities, in the following amounts:

Form 1120X	QRE Reported	Research Credit
2012	\$20,854,794	\$1,447,623
2013	\$17,802,149	\$1,443,446
2014	\$69,769,187	\$8,433,152

18. Apache's 2014 Form 1120X claimed a total research credit of \$12,907,096, which includes carried forward research credits in the amount of \$1,582,875 reported on Apache's 2011 Form 1120, research credits in the amount of \$1,447,623 reported on its 2012 Form 1120X, research credits in the amount of \$1,443,446 reported on its 2013 Form 1120X, and research credits in the amount of \$8,433,152 reported on its 2014 Form 1120X. As a result of these carryforward credits and related adjustments, Apache's 2014 Form 1120X reported and requested a refund of tax in the amount of \$8,122,283, i.e., the Research Credit Refund.

19. On July 30, 2020, the IRS issued a Letter 950 with a Revenue Agent's Report for the tax periods ended 2006, 2007, 2014, 2015, 2016, and 2017 that included Form 4549-A, Form 4549-B and two Forms 886-A. The Revenue Agent's Report proposed a full disallowance of the Research Credit Refund.

20. On September 26, 2022, IRS Appeals issued a formal notice of disallowance of the Research Credit Refund (the "Disallowance Notice") which was contained within the Statutory

Notice of Deficiency issued to Apache for the 2006, 2007, and 2015¹ tax years. *See* attached hereto as ***Exhibit A***, Statutory Notice of Deficiency dated September 26, 2022.

21. Separate from the Research Credit Refund, on or around December 12, 2018, Apache timely filed Form 1139, Corporation Application for Tentative Refund, to carry back a capital loss in the amount of \$607,873,476 pursuant to 26 U.S.C. § 6411 from its 2017 tax year to the Taxable Year at Issue (the “Capital Loss Carryback”).

22. During the course of the IRS examination of the Taxable Year at Issue, as a result of interactions between Apache and the IRS, on or before July 30, 2020, the IRS acknowledged in writing the Capital Loss Carryback Refund resulting from the Capital Loss Carryback and that the amount of this refund was \$53,362,087.

23. In addition to the IRS’s prior written acknowledgement and determination that Apache is entitled to the Capital Loss Carryback Refund, the Statutory Notice of Deficiency issued to Apache for the 2006, 2007, and 2015 tax years contains the following statement allowing a deduction for the Capital Loss Carryback for the Taxable Year at Issue:

Capital Gain Net Income Increase / (Decrease)

It is determined that you are allowed a deduction for a capital loss carryback from the taxable year 2017¹² in the amount of \$607,873,476 for the tax year ended 2014¹². Accordingly, taxable income is decreased \$607,873,476 for the taxable year 2014¹².

¹ The Statutory Notice of Deficiency also denied Apache’s research credits reported on its timely filed 2015 Form 1120X. Apache is currently challenging the denial of its research credits for the 2015 tax year in the United States Tax Court. *See Apache Corporation and Subsidiaries v. Commissioner of Internal Revenue*, Docket 25984-22.

24. Instead of paying Apache the Capital Loss Carryback Refund, it appears from IRS transcripts that the IRS tentatively credited the amount of the refund against the deficiency shown in the Statutory Notice of Deficiency for Apache's 2015 tax year.²

CAUSES OF ACTION

Count One – Research Credit Refund

25. Apache realleges and incorporates the preceding paragraphs as if fully set forth herein.

26. Apache is entitled to payment of the Research Credit Refund and statutory interest thereon.

Count Two – Capital Loss Carryback Refund

27. Apache realleges and incorporates the preceding paragraphs as if fully set forth herein.

28. Apache is entitled to a payment of the Capital Loss Carryback Refund and statutory interest thereon.

PRAYER FOR RELIEF

WHEREFORE, Apache prays for a judgment against Defendant as follows:

a. That Apache be refunded the unlawfully retained Research Credit Refund of \$8,122,283 plus statutory interest thereon.

b. That Apache be refunded the unlawfully retained Capital Loss Carryback Refund of \$53,362,087 plus statutory interest thereon.

² Apache is currently challenging the 2015 deficiency shown in the Statutory Notice of Deficiency in the United States Tax Court. *See Apache Corporation and Subsidiaries v. Commissioner of Internal Revenue*, Docket 25984-22.

c. Apache's costs of this action and for such other, further, and different relief as this Court may deem appropriate.

Dated: September 25, 2024

/s/ Shawn R. O'Brien

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